Constitution of Indian Stream (1832)

[Constitution of the Republic of Indian Stream][1]

PREAMBLE

WHEREAS we the inhabitants of the tract of land situated between Hall's Stream and the stream issueing from Lake Connecticut being the disputed[2] tract of country near the head of Connecticut River which is claimed by the United States and Great Britain respectively & generally known by the name of Indian Stream and, whereas we are deprived of the protection[3] of the Laws of any Government but that of our own until such time as the Boundary line between the two Governments shall be established, and the time in which that will take place is to us unknown, and whereas it is our ardent desire to live in peace, Harmony and good order & considering that these great and good objects cannot be fully enjoyed without some wholesome rules, regulations or code of laws, and considering it the unalienable[4] right of all people situated as we are where ever[5] in the course of providence their lot is cast, and a priviledge which they are in duty bound to improve to strive by all laudable means to take and adopt such measures as shall be best calculated to promote peace and good order in society among themselves while in their present state as well as to prepare them for useful citizens should they hereafter become a constituent part of some other government and whereas it has been the custom of the inhabitants of this place to meet from time to time & pass such votes and bylaws[6] as they deemed necessary for their regulation and support of order without annexing penalties to enforce them, and as the population and i[mpr]ovements have considerably increased and considering the gre[at] importance of making provision for the benefit of the risi[ng] generation, of adopting and enforcing Laws on a more permanent Basis for the support of schools and other public improvements and maintaning & supporting good order in society, And believing the time has now arrived when we must as a body politick make and enforce Laws sufficient to protect and defend the different members of the community and redress the grievances and adjust the disputes and controversies which occasionally arise among them or they will assume the right of individually redressing their own grievances and avenging their own injuries and considering the power of selflove in prejudicing the mind where the individuals are interested and act under the impulse of passion, we believe that if the different members of society are permitted to become their own avengers they would commit great injustice and become aggressors that retaliation would produced fresh injuries, & call into action the worst passions of the heart, which would throw our society into a state of Anarchy & confusion, which would destroy all the peace happiness and pleasant prospects we have theretofore enjoyed.

Therefore we the inhabitants of Indian Stream territory being assembled in general meeting and having[7] considered our situation & circumstances with all the impartiality and candour, which we are capable of exercising, feel a full conviction, that under present[8] existing circumstances we

cannot apply to any government for protection with any probability of success—But by the agreement between the United States & Great Britain that neither party should exercise jurisdiction over the disputed Territory we are left to our own resources for preserving order in society without any probability of receiving any assistance from either government, or any change in our circumstances till the boundary line is established. We therefore believe that while it is unknown to what Government we owe allegiance we possess full right and imperative necessity requires that we should adopt some form of Government which will secure the rights, happiness, and prosperity of the people who inhabit this Territory and feel confident by so doing we shall promote the interest and secure the approbation of the Government to which we shall eventually belong—Therefore resolved that to preserve union among ourselves, establish Justice, ensure domestic tranquility provide for our common security and defence and secure the important Blessings of civilized society, We do ordain and establish this Constitution and the principles of Government therein contained for our future guide and direction in forming and enforcing Laws for the government of the territory of Indian Stream.

CONSTITUTION OF INDIAN STREAM

PART FIRST

Bill of Rights

ART. 1ST. All men are born equally free and independent therefore all government of right originates from the people, is founded in common consent and instituted for the public good.

ART. 2ND. Every man has a natural, essential, and unalienable right to worship God according to the dictates of his own conscience & reason, and is not accountable to any human tribunal, for his religious opinions or practices, provided he does not encroach upon the civil or religious rights of others.

ART. 3RD. All men have certain natural and essential civil rights, among which are the enjoying and defending life and liberty; acquiring, possessing, & protecting property; and in a word of seeking and obtaining happiness. Hence arises the right of controlling those vicious members of society, who invade the rights of others.

ART. 4TH. When men enter into a state of society, they surrender up[9] some of their natural rights to that society, in order to secure the protection of others.

ART. 5TH. Government being instituted for the common benefit, protection & security of the whole community, and not for the private interest or emolument of any one man, family, or class of men; therefore every member of the community has an equal right to be protected by it, in the enjoyment of his life, liberty and property, and is equally bound to contribute his share in the expense of such protection, and to yield his personal service when necessary.

ART. 6TH. Every subject of the government has a right to a certain remedy by having recourse to the Laws for all injuries he may receive in his person, property or character; to obtain right and justice freely and completely, without any denial, promptly and without delay; conformably to the Laws.

ART. 7TH. No subject shall be held to answer for any crime or offence, until the same is fully, plainly, and substancially described to him, nor be compelled to accuse, or furnish evidence against himself: And every subject shall have a right to produce

all proof that may be favorable to himself, to meet the witnesses against him face to face, and be fully heard in his defence by himself or counsel, and no subject shall be arrested, imprisoned, deprived of his property or privileges, put out of the protection of the laws, exiled, or deprived of his life, liberty, or estate, but by the Judgment of his Peers, or the law of the land.

ART. 8TH. No subject shall be liable to be tried after an acquital for the same offence; nor shall the General Assembly make any law, that shall subject any person to corporeal punishment (excepting for the government of the militia while in actual service) without trial by Jury.

ART. 9TH. All punishment ought to be proportioned to the nature of the offence and no excessive cruel or unusual punishment shall be inflicted—the true design of all punishment being to reform and not to exterminate mankind.

ART. 10TH. Every subject hath a right to be secure from all unreasonable searches or seizures of his person, papers and all his possessions—therefore all searches and seizures are contrary to this right, if not made by an officer authorized by Law acting by authority of a warrant the cause or foundation of which hath been confirmed by[10] oath with a special designation of the persons or objects of search or arrest or seizure.

ART. 11TH. All elections ought to be free and every inhabitant having the proper qualifications has an equal right to elect & be elected into office, to enjoy the freedom of speech & debate and act on all business before the general assembly.

ART. 12TH. All power residing originally in and being derived from the people all the magistrates and officers of Government are their substitutes and agents and at all times accountable to them.

ART. 13TH. Man being originally formed by his Creator for society and social intercourse & for mutually aiding, assisting and defending each other and promoting their mutual welfare and happiness therefore all societies of men placed by circumstances of fortune without the Jurisdiction or control of any other society or Government have a right to unite together and institute such government for the regulation of their[11] society as they deem most condusive to the general good, and where a large majority of the people so situated unite together and establish a government the minority of right ought to submit to the majority and be controlled by them.

PART SECOND

Form of Government

The People inhabiting the Territory formerly called Indian Stream Territory do hereby solemnly and mutually agree with each other to form themselves into a body politic by the name of *Indian Stream* and in that capacity to exercise all the powers of a free, sovereign and independent state so far as it relates to our own internal Government, til such time as we can ascertain to what government we properly belong.

The supreme legislative power within this place shall be vested in a Council and assembly. The council and assembly shall meet every year on the second monday in March and at such other times as the council may Judge necessary and shall be styled the general assembly of Indian Stream. The general assembly shall have full power and authority to erect and constitute courts to be holden in the name of the people for trying & determining all manner of crimes,

offences, Pleas, actions, causes or controversies whatsoever which may arise or happen or concern persons, inhabiting or residing within this place, whether the same be criminal or civil or whether the crimes be capital or not capital and for awarding Judgment and issuing executions thereon to which courts are granted full power to administer Oaths or affirmations for the better discovery of truth in any matter depending before them and further full power is hereby granted to said General assembly from time to time to make and establish all manner of wholesome and reasonable Laws and regulations either with or without penalties so as the same be not repugnant to this constitution as they may Judge for the benefit and welfare of this people and for the necessary support and defence of the Government thereof.

The Assembly

Every male inhabitant of Indian Stream who is twenty one years of age or over and has resided in this place three months next preceding any annual session, shall be admitted as a member of the assembly on taking the following oath. I Solemnly Swear that to the best of my power and ability I will support inviolate the constitution and laws of Indian Stream. So help you[12] God.

A majority of the members of the assembly shall constitute a quorum for transacting business, and no business shall be acted upon by the assembly unless a majority of the members are present.

No bills, acts, or resolves shall originate in the assembly but[13] the assembly may fill up Blanks left for the purpose and return the Bills, acts, or resolves to the council with the amendments proposed and if the council concur in the amendment they shall return the Bills, acts, or resolves with the amendments inserted or propose other amendments, but if the council do not concur they shall return the bills, acts, or resolves with their objections then if two thirds of the members of the assembly present persist in their amendments the Clerk shall insert the amendments and the Bill, act, or resolve, shall become a Law without being signed by the council as provided in other cases.

The assembly shall have power to form all necessary rules (not repugnant to the constitution) for preserving order and transacting business in the house during the session, and appoint all necessary officers to carry them into effect.

Every member of the assembly who is hereafter convicted, in due course of Law of Perjury or other high crimes and misdemeanors shall be expelled from the assembly and his name stricken from the roll thereof by the Clerk.

The name of every member who has been absent from this place for the space of six months next preceding any session of the assembly or who may be removed by death shall be erased from the roll by the clerk.

The assembly shall have power to choose or appoint all civil officers required by the Constitution or Laws of Indian Stream for the Government thereof.

The assembly shall have power to adjourn from time to time til the business of the session is completed but no adjournment shall exceed three days at any one[14] time without the consent of the council.

The Council

The Council shall consist of five members chosen annually by ballot by the assembly except in cases hereafter provided on the second monday of March whose term of office shall commence immediately after the close of the session at which they were chosen and expire at the close of the next annual session.

Full power is hereby granted to the council to meet as often as they deem necessary

and they are required to watch over the general peace and safety of the inhabitants to draft, prepare, and report to the assembly, all such Bills, acts and resolves, for making Laws and regulations in the[15] place as they consider necessary for the public good. To commission such officers chosen or appointed by the assembly or Militia as are by the constitution or Laws required to be commissioned by the council and administer the oath of office. To cause complaint to be made and prosecute to[16] final Judgment before any Court proper to try the same all persons subject to indictment for any criminal offence against the peace and dignity of the people.

The council are vested with full power and authority to command the militia by ordering and giving instructions to the officers thereof, and for the special defence and safety of the place to assemble them in martial array to lead and conduct them and with them to encounter repulse, resist and pursue by force of arms within the limits of this place and also to Kill, slay & destroy if necessary, and conquor and compel to obedience to the laws by all fitting ways and means all and every such person or persons as shall at any future time in a hostile manner attempt the destruction or annoyance of the inhabitants of this place or rise in insurrection against the Government or Laws thereof.

Full power is hereby vested in the council of pardoning and remitting the punishment in the name and behalf of the people of all criminals convicted of criminal offences against the laws of Indian Stream in whose favour such palliating circumstances may appear as will convince the council that their punishment can be remitted without injury to society.

Whenever the council desire a special session of the assembly they shall notify the members by posting a notification designating the time and place of meeting at or near the dwelling house of Eben[eze]r Fletcher, at the assembly rooms and at the house of Peter Barnes at least six days before such session and they are required to post with the notification a copy of all Bills, Acts, or Resolves which they intend to report for the consideration of the assembly at said special meeting. The council are further required to post a copy of all Bills, Acts, & Resolves intended to be reported for the consideration of the assembly at the annual session at the three before mentioned places at least fourteen days before said session.

All Bills, Acts & Resolves passed by the assembly and approved by the Council shall be signed by them and recorded and attested by the clerk before they become a law of the land.

Provided that in all cases where the council is mentioned a majority of that body shall be considered the council.

Court of Error

The Council shall constitute a high court of error, and in that capacity full power is hereby vested in them to issue writs of error and stop execution upon the Judgments of all courts hereafter established in this place in all cases where such testimony and evidence is produced before them as shall render it highly probable that such Judgment was founded on an erroneous construction of the law, or is contrary to law or the principles of this constitution, and to issue their mandate to the Justice or Justices of said court, commanding them to reverse or correct their Judgment so as to render it conformable[17] to the true intent and meaning of the constitution and Laws of Indian Stream in all cases where after full investigation they find such Judgment was erroneously rendered.

Provided that no evidence or testimony in the case shall be produced before the court of error which was not brought in evidence

or plea before the court or is contained in the records thereof upon whose Judgment complaint of error is made.

Encouragement of Literature and Moral Virtue

Knowledge and Learning generally diffused through a community being essential for the preservation of a free government, and spreading the opportunities and advantages of education through the various parts of the community being highly conducive to promote this end it shall be the duty of the Legislators and Magistrates in all future periods of this Government to cherish the interest of Literature and sciences and public schools to countenance and inculcate the principles of humanity and general benevolence, public & private charity, industry & economy Honesty and punctuality, sincerity & sobriety, and all social affections and generous sentiments among the people.

Writs, &c.

All writs issued by any court of Law shall be in the name of the inhabitants of Indian Stream, and all indictments, presentments, & informations shall conclude against the peace and dignity of the people.

Oath of Office

Every officer accepting the trust before he proceeds to execute the duties of his office shall make and subscribe the following declaration.

I, A. B. Do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as ——— according to the best of my abilities agreeable to the constitution and Laws of Indian Stream. So help me God.

Provisions

Provided if by any casualty circumstance it should so happen that a quorum of the assembly should not be present at any annual session all officers whose term of office would otherwise expire at that session shall continue in office til others are chosen or appointed to superscede them.

The general assembly shall have power to make Laws for raising, assessing & collecting taxes for the support of government, Laying out making & repairing highways and Bridges & for[18] support of Public schools and other public purposes to be apportioned among the people in the most equal manner that circumstances will admit. And shall provide for and reasonably compensate the council and clerk and all such other officers as by law shall be authorized to receive compensation from the people for their services rendered.

Provided that nothing in this constitution shall be so construed as to prevent the members of the council from acting and voting in the assembly the same as other members.

The Clerk of the assembly shall superscede the clerk of Indian Stream Territory and keep and preserve all public records heretofore made and shall record keep and preserve all public records hereafter, and perform all duties required of him by law.

Provided that if any officer shall remove from this place or resign or is removed by death thereby leaving his office vacant the council shall fill the vacancy by appointing such person as they consider qualified to discharge the duties of the office, to fill such vacancy.

Provided that all the Laws rules and regulations which have heretofore been adopted by the inhabitants of Indian Stream Territory shall remain and be in full force until altered or repealed by the general assembly such parts thereof only excepted as are re-

pugnant to the rights & liberties contained in this constitution.

Provisions for adopting the Constitution and Laws reported by the Committee & for carrying them into immediate effect

Provided that after the committee shall have reported this constitution at the meeting specially called for that purpose the moderator shall put the question to the people in the following words; is this constitution approved and shall it be adopted and shall then from a roll prepared by the clerk containing the name of every legal voter in this place (Errors Excepted) proceed and call the name of every voter contained in the roll, and recieve their vote by their answering yea or nay, and the clerk shall record every vote given against the name of the voter who gave it.

The moderator shall then say if there is any voter present whose name has not been called, he is requested to come forward and give his vote.

The moderator shall then cast up all the yeas and nays and declare the number of all the votes given and the number of the yeas and nays separately and if it shall then appear that two thirds of all the votes[19] given are yeas, the moderator shall declare this constitution is adopted, but if it[20] shall appear that less than two thirds of all the votes given are yeas, the moderator shall declare this constitution is not adopted.

Provided further that if this constitution is adopted that[21] every legal voter at this time desirous of becoming a member of the assembly shall present himself to the Clerk who shall then enroll the names of said voters and administer the Oath prescribed in the Constitution.

And in all cases where the Clerk shall enroll and admit persons as members of the assembly he shall certify in the following form – That on the ——— day of ——— in the year —— personally appeared before me the above named Inhabitants[22] of Indian Stream and were duly qualified and admitted members of the assembly agreeable to the constitution. A.B. Clerk of Indian Stream.

The moderator of the meeting shall then call the members of the assembly to order and call for the ballots for a speaker of the assembly the member having a majority of all the votes given shall be declared Elected. They shall proceed in the same manner to elect a Clerk. The moderator shall then administer the oath of office to the Clerk & the Clerk to the Speaker, the moderator shall then declare the assembly organized and the meeting dissolved. The assembly shall then proceed to transact what is proper to be done by the General Assembly at the annual session, the Committee which reported this Constitution being authorized to act as council til the close of the session.

And Provided further that all Bills, acts, and resolves reported by the committee shall not be barred by reason of not having been posted but shall be considered constitutionally reported to the assembly.

And provided that the term of office of all officers chosen or appointed at this session shall expire the same as though they had commenced on the second monday in March last.

Provision for altering and amending this Constitution

The Speaker of the assembly shall at every annual session when a quorum is present put the question, is it necessary to alter or amend the Constitution and take the vote by Yeas and Nays by calling the name of every member and if a majority of all the members are in favor of altering or amending the Constitution, the speaker shall de-

clare it necessary to alter & amend the Constitution. The assembly shall then choose a committee to prepare such alterations in the constitution as they think necessary to be approved by the assembly at a special meeting to be holden expressly for that purpose, or at any session of the assembly[23] legally held, and when the committee have proposed their alteration or amendment the speaker shall put the question, shall these alterations and amendments be made and adopted into the constitution and take the vote by yeas & nays as above and if two thirds of all the members present shall vote in favor of the question the speaker shall declare the alterations and amendments are made in the constitution but if two thirds of all the members present do not vote in favour of the question the speaker shall declare no alteration or amendment is made in the constitution.

Provided that nothing contained in this constitution shall be so construed as to extend the Jurisdiction of this government over any inhabitants settled on the east side of Halls Stream if any there are who are included within the chartered limits of Hereford.[24]

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[1] Verified by the original manuscript as preserved in the New Hampshire State Archives at Concord, NH. Spelling, capitalization, and punctuation as in the manuscript, headline in manuscript missing. Also checked against the versions as published in Grant Showerman, *The Indian Stream Republic and Luther Parker* (*Collections of the New Hampshire Historical Society*, XI), Concord, N.H.: New Hampshire Historical Society, 1915, 57–67, and the Internet at http://defiantdesigns.googlegroups.com/web/The+Indian+Stream+Constitution.pdf. The constitution was adopted and went into effect on July 9, 1832. It was the result of the uncertainty to which country the territory belonged in view of the conflicting claims resulting from diverging interpretations of the boundary line between the United States and the British possession of Quebec in the Treaty of Paris of 1783 (cf. art. II of the Definitive Treaty of Peace between the United States of America and His Britannic Majesty, 3 September 1783, in: *The Public Statutes at Large of the United States, From the Organization of the Government in 1789, to March 3, 1845*, ed. by Richard Peters, VIII, Boston: Little, Brown and Company, 1867, 81). The Republic of Indian Stream existed until 1835 when New Hampshire militia moved into the area and the inhabitants consented to the territory being integrated into the United States. By international law it became a definite part of the United States through the Webster-Ashburton Treaty of 1842 which finally settled the American-British boundary disputes in the Northeast (cf. art. I of A Treaty to settle and define the boundaries between the territories of the United States and the possessions of Her Britannic Majesty in North America, 9 August 1842, ibid., 573). Cf., though somewhat oscillating between history and fiction, Daniel Doan, *Indian Stream Republic. Settling a New England Frontier, 1785–1842*, Hanover and London: University Press of New England, 1997.

[2] In Internet publication, word missing.

[3] Ibid., "protections".

[4] Ibid., "inalienable".

[5] Ibid., "whenever".

[6] In Showerman, *The Indian Stream Republic*, 57, and in Internet publication, "by laws".

[7] In Internet publication, word missing.

[8] In Showerman, *The Indian Stream Republic*, 58, and in Internet publication, word missing.

[9] In Internet publication, word missing.

[10] Ibid., word missing.

[11] Ibid., "other society or Government have a right to unite together and institute such government for the regulation of their" missing.

[12] In Showerman and in Internet publication, "me".

[13] In manuscript, "but but".

[14] In Internet publication, word missing.

[15] In Showerman, *The Indian Stream Republic*, 62, and in Internet publication, "this".

[16] In Internet publication, word missing.

[17] Ibid., "conforming".

[18] In Showerman, *The Indian Stream Republic*, 64, and in Internet publication, "for the".

[19] In Internet publication, "voters".

[20] Ibid., word missing.

[21] In Showerman, *The Indian Stream Republic*, 66, and in Internet publication, word missing.

[22] In Internet publication, "inhabitant".

[23] Ibid., last three words missing.

[24] Ibid., "June 11, 1832" added. However, this date is misleading as on June 11, the committee was chosen to draft a constitution, whereas the constitution was adopted at the meeting of July 9, 1832 (cf. p. 1 of the manuscript). At the end of p. 11 of the manuscript is added: "The votes for adopting the Constitution was as follows[:] Yeas 56. Nays 3. Whole number 59" (cf. Showerman, *The Indian Stream Republic*, 55–56, 68). In 1824, 58 families were reported to have settled in the Indian Stream country, comprising a total population of 285, numbers which did not change much over the next decade or so (ibid., 21, 28).